equipment for purposes other than resale.

Used solely for competition means exhibiting features that are not easily removed and that would render its use other than in competition unsafe, impractical, or highly unlikely.

[59 FR 31335, June 17, 1994, as amended at 61 FR 52102, Oct. 4, 1996]

§ 89.3 Acronyms and abbreviations.

The following acronyms and abbreviations apply to part 89.

AECD	Auxiliary emission control device.
ASME	American Society of Mechanical Engineers.
ASTM	American Society for Testing and Materials.
CAA	Clean Air Act.
CAAA	Clean Air Act Amendments of 1990.
CI	Compression-ignition.
CO	Carbon monoxide.
CO_2	Carbon dioxide.
EPA	Environmental Protection Agency.
FEL	Family emission limit.
FTP	Federal Test Procedure.
g/kW-hr	Grams per kilowatt hour.
HC	Hydrocarbons.
ICI	Independent Commercial Importer.
kW	Kilowatt.
NIST	National Institute for Standards and Testing.
NTIS	National Technical Information Service.
NO	Nitric oxide.
NO_2	Nitrogen dioxide.
NO_X	Oxides of nitrogen.
O_2	Oxygen.
OEM	Original equipment manufacturer.
SAE	Society of Automotive Engineers.
SEA	Selective Enforcement Auditing.
SI	Spark-ignition.
U.S.C.	United States Code.
VOC	Volatile organic compounds.

§ 89.4 Section numbering.

(a) Sections are numbered sequentially by subpart.

(b) Where two different standards or requirements are concurrently applicable, the model year of applicability is indicated by the number following the main section number. The two digits following the hyphen designate the first model year for which a section is effective.

EXAMPLE: Section 89.304–96 applies to the 1996 and subsequent model years until superseded. If a § 89.304–98 is promulgated, it would take effect beginning with the 1998 model year; § 89.304–96 would apply to model years 1996 through 1997. Therefore, in calendar year 1997, a manufacturer may be certifying both 1997 and 1998 model year engines, requiring the use of different requirements concurrently.

NOTE: Model year 2000 and later will appear sequentially with 1999 and earlier based on the order of the last two digits of the year, not in calendar year order; that is, § 89.304–03 will appear before § 89.304–99.

(c) A section without the model year designation is applicable to all model years as designated in the applicability section for the subpart or part or in the text of the section.

§ 89.5 Table and figure numbering; position.

(a) Tables for each subpart appear in an appendix at the end of the subpart. Tables are numbered consecutively by order of appearance in the appendix. The table title will indicate the model year (if applicable) and the topic.

(b) Figures for each subpart appear in an appendix at the end of the subpart. Figures are numbered consecutively by order of appearance in the appendix. The figure title will indicate the model year (if applicable) and the topic.

§ 89.6 Reference materials.

(a) *Incorporation by reference.* The documents in paragraph (b) of this section have been incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at US EPA, OAR, 401 M Street SW., Washington, DC 20460, or at the Office of the Federal Register, 800 N. Capitol Street NW., Suite 700, Washington, DC.

(b) The following paragraphs and tables set forth the material that has

been incorporated by reference in this part.

(1) *ASTM material.* The following table sets forth material from the American Society for Testing and Materials which has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than §89.6, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. Copies of these materials may be obtained from American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

Document number and name	40 CFR part 89 reference
ASTM D86–90:	
Standard Test Method for Distillation of Petroleum Products	Appendix A to Subpart D.
ASTM D93–90:	
Standard Test Methods for Flash Point by Pensky-Martens Closed Tester	Appendix A to Subpart D.
ASTM D129–91:	
Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)	Appendix A to Subpart D.
ASTM D287–92:	
Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).	Appendix A to Subpart D.
ASTM D445–88:	
Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity).	Appendix A to Subpart D.
ASTM D613–86:	
Standard Test Method for Ignition Quality of Diesel Fuels by the Cetane Method	Appendix A to Subpart D.
ASTM D1319–89:	
Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.	Appendix A to Subpart D.
ASTM D2622–92:	
Standard Test Method for Sulfur in Petroleum Products by X-ray Spectrometry	Appendix A to Subpart D.
ASTM E29–90:	
Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	89.207–96; 89.509–96.

(2) *SAE material.* The following table sets forth material from the Society of Automotive Engineers which has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than §89.6, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. Copies of these materials may be obtained from Society of Automotive Engineers International, 400 Commonwealth Dr., Warrendale, PA 15096–0001.

Document number and name	40 CFR part 89 reference
SAE J244 June 83:	
Recommended Practice for Measurement of Intake Air or Exhaust Gas Flow of Diesel Engines	89.416–96
SAE J1937 November 89:	
Recommended Practice for Engine Testing with Low Temperature Charge Air Cooler Systems in a Dynamometer Test Cell	89.327–96
SAE Paper 770141:	
Optimization of a Flame Ionization Detector for Determination of Hydrocarbon in Diluted Automotive Exhausts, Glenn D. Reschke	89.319–96

(3) *California Air Resources Board Test Procedure.* The following table sets forth material from the Title 13, California Code of Regulations, Sections 2420–2427, as amended by California Air Resources Board Resolution 92–2 and published in California Air Resources Board mail out #93–42, September 1, 1993) which has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than §89.6, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. Copies of

these materials may be obtained from California Air Resources Board, Haagen-Smit Laboratory, 9528 Telstar Avenue, El Monte, CA 91731–2990.

Document number and name	40 CFR part 89 reference
California Regulations for New 1996 and Later Heavy-Duty Off-Road Diesel Cycle Engines	89.112–96 89.119–96 89.508–96

§ 89.7 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this part is entitled to confidential treatment as provided by part 2, subpart B of this chapter.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this part is confidential, a manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this part is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in part 2, subpart B of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with § 2.204(c)(2)(i)(A) of this chapter.

Appendix A to Subpart A—Internal Combustion Engines Manufactured Prior to July 18, 1994

This appendix sets forth the Environmental Protection Agency's (EPA's) interpretation of the Clean Air Act regarding the status of certain internal combustion engines manufactured before July 18, 1994, (the effective date of the final rulemaking promulgating EPA's definition of nonroad engine). This interpretation does not alter, replace, supersede, or change the scope of subpart A. It is not final agency action subject to judicial review.

1. EPA interprets the Clean Air Act as not precluding state regulation of internal combustion engines manufactured prior to July 18, 1994, except that state regulation of such engines that are used in motor vehicles or vehicles used solely for competition is precluded. EPA believes that the language of Clean Air Act section 302(z) generally excluding emissions resulting directly from nonroad engines and nonroad vehicles from the definition of stationary source could not be applied until after the definition of nonroad engine was specified in final regulations promulgated by EPA. EPA believes that if the exclusionary language of section 302(z) were applied before EPA's definition of nonroad engine became final, states would have been frustrated from regulating internal combustion engines manufactured during that time, given the uncertain nature of the definition of such engines. EPA believes that Congress did not intend states to be prevented from regulating these engines before a final EPA definition was promulgated. EPA does not believe that Congress intended the exclusionary language of section 302(z) regarding nonroad engines and vehicles to be applied retroactively to engines, vehicles, and equipment regulated pursuant to a permit issued before the date that the terms nonroad engine and nonroad vehicle were defined.

2. EPA further believes that internal combustion engines manufactured prior to July 18, 1994 are not preempted, under Clean Air Act section 209, from state regulation. The two sections of the Act preempting state regulation of nonroad engines, section 209(e)(1) and section 209(a) (as incorporated by section 213(d)), refer to ''nonroad engines subject to regulation under this Act'' or to engines ''subject to this part'' (i.e., part A of title II of the Act). EPA believes that, until EPA promulgated final regulations defining nonroad engines and subjecting such engines to regulation, these engines were not preempted from state regulation under the Act,